

RECORDATION NO.

25704 FILED

JUL 11 '05

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SURFACE TRANSPORTATION BOARD

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July 5, 2005

**VIA FEDEX**

Secretary, Surface Transportation Board  
1925 K Street, N.W.  
Suite 700  
Washington, D.C. 20423

Re: Pledge and Security Agreement from Bayport Rail Terminal  
LLC to Amegy Bank National Association, as Secured Party (the  
"Security Agreement")

To whom it may concern:

I have enclosed one (1) original and one (1) certified copy of the above referenced Security Agreement which needs to be recorded with your office.

The names and addresses of the parties to the Security Agreement are as follows:

Secured Party:  
Amegy Bank National Association  
Five Post Oak Place  
4400 Post Oak Parkway  
Houston, Texas 77027

Debtor:  
Bayport Rail Terminal LLC  
9500 New Century Drive  
Pasadena, Texas 77507-1836

A description of the equipment covered by the Security Agreement is as follows:

(a) One GP7 1500HP Locomotive manufactured in 1952 by General Motors and presently known as AKDN-703;

(b) all Debtor's right title and interest to all tangible personal property incorporated into the Locomotive or acquired for incorporation into the Locomotive, including all machinery, equipment, fixtures and other personalty of every nature and

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Austin ■ Dallas ■ Houston ■ Mexico City ■ Washington, DC

description incorporated into the Locomotive or acquired for incorporation into the Locomotive, whether now owned or hereafter acquired, and all appurtenances, accessions and additions thereto and substitutions and replacements therefor, wheresoever located, including all tools, parts and accessories used in connection therewith;

(c) all of Debtor's accounts, accounts receivable, contract rights, investment securities, financial assets, general intangibles, instruments, documents, chattel paper and funds on deposit with Secured Party, whether now owned or hereafter acquired, including, without limitation, all lease receivables and note receivables, all cash, notes and drafts;

(d) acceptances arising therefrom, or other proceeds of any sale, lease or other disposition of inventory, and all proceeds (including insurance proceeds) and products thereof;

(e) all of Debtor's right, title and interest in and to any and all leases covering the Locomotive (the "Leases");

(f) all rights, remedies and privileges of Debtor to enforce the Leases;

(g) all other general intangibles of Debtor arising from or relating to the Leases;

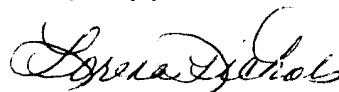
(h) all of Debtor's right, title and interest in and to, but not Debtor's obligations under, the Management Agreement between Bayport Rail Terminal LLC, a Delaware limited liability company and Debtor; and

(i) all products and proceeds thereof (including insurance proceeds).

A fee of \$30.00 is enclosed. Please return one (1) file stamped original of the Security Agreement after recording.

If you have any questions, please give me a call at 713-276-5351.

Very truly yours,



Lorena Nichols, CLA  
Paralegal to Carol M. Burke

Enclosure

Cc: Clyde Crutchmer (w/encl.) via facsimile: 918-382-8686  
Carmen Jordan (w/o encl.) via facsimile: 713-693-7475  
Carol M. Burke (w/o encl.)

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5-00 PM

**PLEDGE AND SECURITY AGREEMENT**

SURFACE TRANSPORTATION BOARD

THIS PLEDGE AND SECURITY AGREEMENT (this "**Agreement**") is entered into as of June 30, 2005 by and among Bayport Rail Terminal LLC, a Texas limited liability company (the "**Debtor**"), and Amegy Bank National Association, a national banking association, in its capacity as the administrative agent for the lenders party to the Loan Agreement referred to below (in such capacity, together with its successors in such capacity, the "**Secured Party**").

**PRELIMINARY STATEMENT**

Debtor, Secured Party, as administrative agent and as a lender, and the lenders named therein (collectively, the "**Lenders**") are entering into a Loan Agreement dated as of June 30, 2005 (as it may be amended, restated or modified from time to time, the "**Loan Agreement**"). Debtor is entering into this Agreement in order to, among other things, induce the Lender to enter into and extend credit to Debtor under the Loan Agreement.

ACCORDINGLY, Debtor and Secured Party hereby agree as follows:

**ARTICLE I****DEFINITIONS**

1.1 **Terms Defined in Loan Agreement.** All capitalized terms used herein and not otherwise defined shall have the meanings assigned to such terms in the Loan Agreement.

1.2 **Terms Defined in Texas Uniform Commercial Code.** Terms defined in the Texas Uniform Commercial Code which are not otherwise defined in this Agreement are used herein as defined in the Texas Uniform Commercial Code as in effect on the date hereof.

1.3 **Definitions of Certain Terms Used Herein.** As used in this Agreement, in addition to the terms defined in the Preliminary Statement, the following terms shall have the following meanings:

**"Accounts"** mean any "account," as such term is defined in Section 9.102(a)(2) of the UCC, now owned or hereafter acquired by Debtor, and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) all rights of Debtor to payment for goods sold or leased or services rendered or the license of Intellectual Property, whether or not earned by performance, (b) all accounts receivable of Debtor, (c) all rights of Debtor to receive any payment of money or other form of consideration, (d) all security pledged, assigned, or granted to or held by Debtor to secure any of the foregoing, (e) all guaranties of, or indemnifications with respect to, any of the foregoing, (f) all Chattel Paper, (g) all Instruments, and (h) all rights of Debtor as unpaid sellers of goods or services, including, but not limited to, all rights of stoppage in transit, replevin, reclamation, and resale.

**"Account Debtor"** means any Person who is or who may become obligated to Debtor under, with respect to, or on account of an Account.

**"Article"** means a numbered article of this Agreement, unless another document is specifically referenced.

**"Chattel Paper"** means any "chattel paper", as such term is defined in Section 9.102(a)(11) of the UCC, now owned or hereafter acquired by Debtor and, in any event, shall include, without limitation, all Electronic Chattel Paper, Tangible Chattel Paper and all records that evidence both a monetary

obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, or a lease of specific goods, now owned or hereafter acquired by Debtor.

**"Collateral"** means all Accounts, Chattel Paper, Documents, Equipment, General Intangibles, Financial Assets, Letter of Credit Rights, Commercial Tort Claims, Fixtures, Instruments, Inventory, Intellectual Property, Deposit Accounts, including all funds, certificates, checks, drafts, wire transfer receipts, and other earnings, profits, or other proceeds from time to time representing, evidencing, deposited into, or held in Deposit Accounts, and Other Collateral, wherever located, in which Debtor now has or hereafter acquires any right or interest, and the Proceeds, insurance proceeds and products thereof, together with all books and records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto, including without limitation, any locomotives now or in the future owned by Debtor.

**"Commercial Tort Claims"** means any "commercial tort claim", as such term is defined in Section 9.102(a)(13) of the UCC, now owned or hereafter acquired by Debtor and in any event, shall include, without limitation, any claim now owned or hereafter acquired by Debtor, arising in tort with respect to which: (a) the claimant is an organization; or (b) the claimant is an individual and the claim (i) arose in the course of the claimant's business or profession and (ii) does not include damages arising out of personal injury to or the death of an individual.

**"Control"** shall have the meaning set forth in Section 9.115 of the UCC.

**"Debtor"** includes Debtor's successors and assigns.

**"Deposit Accounts"** means any "deposit account", as such term is defined in Section 9.102(a)(29) of the UCC, now owned or hereafter acquired by Debtor and in any event, shall include, without limitation, any and all deposit accounts or other bank accounts now owned or hereafter acquired or opened by Debtor, and any account which is a replacement or substitute for any of such accounts, including, without limitation, those deposit accounts identified on **Exhibit "A"**.

**"Documents"** means any "document", as such term is defined in Section 9.102(a)(30) of the UCC, now owned or hereafter acquired by Debtor, including without limitation all bills of lading, dock warrants, dock receipts, warehouse receipts and orders for the delivery of goods, and also any other document which in the regular course of business or financing is treated as adequately evidencing that the person in possession of it is entitled to receive, hold and dispose of the document and the goods it covers.

**"Electronic Chattel Paper"** means any "electronic chattel paper", as such term is defined in Section 9.102(a)(31) of the UCC, now owned or hereafter acquired by Debtor.

**"Equipment"** means any "equipment", as such term is defined in Section 9.102(a)(33) of the UCC, now owned or hereafter acquired by Debtor and, in any event, shall include, without limitation, all machinery, equipment, furnishings, Fixtures and vehicles now owned or hereafter acquired by Debtor and any and all additions, substitutions, and replacements of any of the foregoing, wherever located, together with all attachments, components, parts, equipment, and accessories installed thereon or affixed thereto, including, without limitation, the locomotive more specifically described on **Exhibit "B"**.

**"Exhibit"** refers to a specific exhibit to this Agreement, unless another document is specifically referenced.

**"Financial Assets"** means any "financial asset", as such term is defined in Section 8.102(a)(9) of the UCC, now owned or hereafter acquired by Debtor.

**"Fixtures"** means all goods which become so related to particular real estate that an interest in such goods arises under any real estate law applicable thereto, including, without limitation, all trade fixtures.

**"General Intangibles"** means any "general intangibles", as such term is defined in Section 9.102(a)(42) of the UCC, now owned or hereafter acquired by Debtor and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) all of Debtor's trade secrets, Intellectual Property, registrations, renewal rights, goodwill franchises, licenses, permits, proprietary information, customer lists, designs, and inventions, (b) all of Debtor's books, records, data, plans, manuals, computer software, and computer programs, (c) all of Debtor's contract rights, partnership interests, joint venture interests, securities, deposit accounts, investment accounts, certificates of deposit, and investment property, (d) all rights of Debtor to payment under letters of credit and similar agreements, (e) all tax refunds and tax refund claims of Debtor, (f) all choses in action and causes of action of Debtor (whether arising in contract, tort, or otherwise and whether or not currently in litigation) and all judgments in favor of Debtor, (g) all rights and claims of Debtor under warranties and indemnities, and (h) all rights of Debtor under any insurance, surety, or similar contract or arrangement.

**"Instrument"** means any "instrument", as such term is defined in Section 9.102(a)(47) of the UCC, now owned or hereafter acquired by Debtor, other than stock and other securities, and in any event, shall include, without limitation, all promissory notes, drafts, bills of exchange and trade acceptances of Debtor, whether now owned or hereafter acquired.

**"Intellectual Property"** means the copyrights, copyright licenses, patents, patent licenses, trademarks, and trademark licenses now owned or hereafter acquired by Debtor.

**"Inventory"** means any "inventory", as such term is defined in Section 9.102(a)(48) of the UCC, now owned or hereafter acquired by Debtor, and, in any event, shall include, without limitation, each of the following, whether now owned or hereafter acquired by Debtor: (a) all goods and other personal property of Debtor that are held for sale or lease or to be furnished under any contract of service, (b) all raw materials, work-in-process, finished goods, inventory, supplies, and materials of Debtor, (c) all wrapping, packaging, advertising, and shipping materials of Debtor, (d) all goods that have been returned to, repossessed by, or stopped in transit by Debtor, and (e) all Documents evidencing any of the foregoing.

**"Leases"** means any and all leases covering any Equipment, whether now owned or hereafter acquired by Debtor.

**"Letter-of-Credit Right"** means any "letter-of-credit right", as such term is defined in Section 9.102(a)(51) of the UCC, now owned or hereafter acquired by Debtor, and in any event, shall include, without limitation, any right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance (but shall not include any right of a beneficiary to demand payment or performance under a letter of credit), now owned or hereafter acquired by Debtor.

**"Management Agreement"** means that certain Management Agreement between Debtor and Guarantor.

**"Obligations"** means:

- (a) Debtor's obligations and indebtedness under the Loan Agreement, any Rate Management Agreement, and any Loan Document;
- (b) all future advances by Lender or its Affiliates to Debtor;
- (c) all costs and expenses, including, without limitation, all reasonable attorneys' fees and legal expenses, incurred by Lender or its Affiliates to preserve and maintain the Collateral, collect the obligations herein described, and enforce this Agreement;
- (d) all other obligations, indebtedness, and liabilities of Debtor to Lender or its Affiliates, now existing or hereafter arising, regardless of whether such obligations, indebtedness, and liabilities are similar, dissimilar, related, unrelated, direct, indirect, fixed, contingent, primary, secondary, joint, several, or joint and several;
- (e) all amounts owed under any extension, renewal, or modification of any of the foregoing; and
- (f) any of the foregoing that arises after the filing of a petition by or against Debtor under the Bankruptcy Code, even if the obligations due do not accrue because of the automatic stay under Bankruptcy Code § 362 or otherwise.

**"Other Collateral"** means any property of Debtor, not included within the defined terms Accounts, Chattel Paper, Documents, Equipment, General Intangibles, Financial Assets Instruments, Letter-of-Credit Rights, Commercial Tort Claims, Inventory, Deposit Accounts, including all funds, certificates, checks, drafts, wire transfer receipts, and other earnings, profits, or other proceeds from time to time representing, evidencing, deposited into, or held in Deposit Accounts, including, without limitation, all cash on hand and all deposit accounts or other deposits (general or special, time or demand, provisional or final) with any bank or other financial institution.

**"Proceeds"** means any "proceeds," as such term is defined in Section 9.102(a)(65) of the UCC and, in any event, shall include, but not be limited to, (a) any and all proceeds of any insurance, indemnity, warranty, or guaranty payable to Debtor from time to time with respect to any of the Collateral, (b) any and all payments (in any form whatsoever) made or due and payable to Debtor from time to time in connection with any requisition, confiscation, condemnation, seizure, or forfeiture of all or any part of the Collateral by any Governmental Authority (or any person acting under color of Governmental Authority), and (c) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

**"Receivables"** means the Accounts, Chattel Paper, Documents, Instruments, or Commercial Tort Claims, and any other rights or claims to receive money which are General Intangibles or which are otherwise included as Collateral.

**"Section"** means a numbered Section of this Agreement, unless another document is specifically referenced.

**"Secured Obligations"** means the Obligations, including without limitation any such Obligations incurred or accrued during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, whether or not allowed or allowable in such proceeding.

**"Security"** has the meaning set forth in 8.102(a)(15) of the UCC.

**"Tangible Chattel Paper"** means any "tangible chattel paper", as such term is defined in Section 9.102(a)(79) of the UCC, now owned or hereafter acquired by Debtor.

**"UCC"** means the Uniform Commercial Code as in effect in the State of Texas, as the same has been or may be amended or revised from time to time, or, if so required with respect to any particular Collateral by mandatory provisions of applicable law, as in effect in the jurisdiction in which such Collateral is located.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

## ARTICLE II

### GRANT OF SECURITY INTEREST

2.1 **Security Interest.** Debtor hereby pledges, assigns and grants to Secured Party, a security interest in all of Debtor's right, title and interest in and to the Collateral to secure the prompt and complete payment and performance of the Secured Obligations. If the security interest granted hereby in any rights of Debtor under any contract included in the Collateral is expressly prohibited by such contract, then the security interest hereby granted therein nonetheless remains effective to the extent allowed by Article or Chapter 9 of the UCC or other applicable law but is otherwise limited by that prohibition. Secured Party acknowledges that the attachment of its security interest in any Commercial Tort Claim as Collateral is subject to Debtor's compliance with **Section 4.13.**

2.2 **Debtor Remains Liable.** Notwithstanding anything to the contrary contained herein, (a) Debtor shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all of its respective duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by Secured Party of any of its rights hereunder shall not release Debtor from any of its duties or obligations under the contracts and agreements included in the Collateral, and (c) Secured Party shall not have any obligation or liability under any of the contracts and agreements included in the Collateral by reason of this Agreement, nor shall Secured Party be obligated to perform any of the obligations or duties of Debtor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

2.3 **Authorization to File Financing Statements.** Debtor hereby irrevocably authorizes Secured Party at any time and from time to time to file in any UCC jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as all assets of Debtor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article or Chapter 9 of the UCC, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by subchapter E of Chapter 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether Debtor is an organization, the type of organization and any organization identification number issued to Debtor and (B) in the case of a financing statement filed as a fixture filing or indicating Collateral as as-extracted collateral or timber to be cut, a sufficient description of real property to which the Collateral relates. Debtor agrees to furnish any such information to Secured Party promptly upon request.

## ARTICLE III

### REPRESENTATIONS AND WARRANTIES

Debtor represents and warrants to Secured Party that:

3.1 Title, Authorization, Validity and Enforceability. Debtor has good and valid rights in and title to the Collateral with respect to which it has purported to grant a security interest hereunder, free and clear of all Liens except for Liens permitted under Section 4.1.7, and has full power and authority to grant to Secured Party the security interest in such Collateral pursuant hereto. The execution and delivery by Debtor of this Agreement has been duly authorized by proper corporate proceedings, and this Agreement constitutes a legal, valid and binding obligation of Debtor and creates a security interest which is enforceable against Debtor in all now owned and hereafter acquired Collateral. When this Agreement of financing statements have been filed in the appropriate offices against Debtor in the locations listed on Exhibit "C", Secured Party will have a fully perfected first priority security interest in that Collateral in which a security interest may be perfected by filing, subject only to Liens permitted under Section 4.1.7.

3.2 Conflicting Laws and Contracts. Neither the execution and delivery by Debtor of this Agreement, the creation and perfection of the security interest in the Collateral granted hereunder, nor compliance with the terms and provisions hereof will violate any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on Debtor or Debtor's articles or certificate of incorporation, bylaws, articles of organization or operating agreement or other charter documents, as the case may be, the provisions of any indenture, instrument or agreement to which Debtor is a party or is subject, or by which it, or its property, is bound, or conflict with or constitute a default thereunder, or result in the creation or imposition of any Lien pursuant to the terms of any such indenture, instrument or agreement (other than any Lien of Secured Party).

3.3 Principal Location. Debtor's mailing address, and the location of its chief executive office and of the books and records relating to the Receivables, are disclosed in Exhibit "D"; Debtor has no other place of business except those set forth in Exhibit "D".

3.4 Property Locations. The Inventory, Equipment, Leases and Fixtures are located solely at the locations described in Exhibit "D". All of said locations are owned by Debtor except for locations (i) which are leased by Debtor as lessee and designated in Part B of Exhibit "D" and (ii) at which Inventory is held in a public warehouse or is otherwise held by a bailee or on consignment as designated in Part C of Exhibit "D", with respect to which Inventory Debtor has delivered bailment agreements, warehouse receipts, financing statements or other documents satisfactory to the Banks to protect the Secured Party's security interest in such Inventory.

3.5 Deposit Account. Exhibit "A" correctly identifies all deposit accounts owned by Debtor and the institutions holding such accounts. No Person other than Debtor has control over any deposit account.

3.6 Litigation. There is no litigation investigation or governmental proceeding threatened against Debtor or any of its properties which if adversely determined would have a Material Adverse Effect on the Collateral or the financial condition, operations, or business of Debtor, including without limitation any litigation investigation or governmental proceeding threatened against Debtor with, or by, the Surface Transportation Board of the Department of Transportation, the Interstate Commerce Commission, the Association of American Railroads.



3.7 No Other Names. Debtor has not conducted business under any name except the name in which it has executed this Agreement and, prior to the filing of the Certificate of Conversion dated April 19, 2005, "Bayport Rail Terminal, Inc."

3.8 No Event of Default. No Event of Default exists.

3.9 Accounts and Chattel Paper. The names of the obligors, amounts owing, due dates and other information with respect to the Accounts and Chattel Paper are and will be correctly stated in all records of Debtor relating thereto and in all invoices and reports with respect thereto furnished to Secured Party by Debtor from time to time. As of the time when each Account or each item of Chattel Paper arises, Debtor shall be deemed to have represented and warranted that such Account or Chattel Paper, as the case may be, and all records relating thereto, are genuine and in all respects what they purport to be.

3.10 No Financing Statements. No financing statement describing all or any portion of the Collateral which has not lapsed or been terminated naming Debtor as debtor has been filed in any jurisdiction except (i) financing statements naming the Secured Party as the secured party, and (ii) as permitted by Section 4.1.7.

3.11 Federal Employer Identification Number. Debtor's Federal employer identification number is listed on Exhibit "E".

3.12 Leases. Exhibit "B" sets forth a complete and accurate list of all Leases owned by Debtor. Debtor further represents and warrants that the Leases are in full force and effect, and no default exists under any Lease.

3.13 Management Agreement. Neither Debtor nor Guarantor is in default of its obligations under the terms and conditions of the Management Agreement. The Management Agreement is in full force and effect.

3.14 No Agreement. No security agreement describing all or any portion of the Collateral which has not lapsed or been terminated naming Debtor as debtor has been filed in any jurisdiction except (i) this Agreement and (ii) as permitted by Section 4.1.7.

## ARTICLE IV

### COVENANTS

From the date of this Agreement, and thereafter until this Agreement is terminated:

#### 4.1 General.

4.1.1 Inspection. Debtor will permit Secured Party, by its representatives and agents (i) to inspect the Collateral, (ii) to examine and make copies of the records of Debtor relating to the Collateral and (iii) to discuss the Collateral and the related records of Debtor with, and to be advised as to the same by, Debtor's officers and employees (and, in the case of any Receivable, with any person or entity which is or may be obligated thereon), all at such reasonable times and intervals as Secured Party may determine, and all at Debtor's expense.

4.1.2 Taxes. Debtor will pay when due all taxes, assessments and governmental charges and levies upon the Collateral, except those which are being contested in good faith by appropriate proceedings and with respect to which no Lien exists.

4.1.3 Records and Reports; Notification of Event of Default. Debtor will maintain complete and accurate books and records with respect to the Collateral, and furnish to Secured Party such reports relating to the Collateral as Secured Party shall from time to time request. Debtor will give prompt notice in writing to Secured Party of the occurrence of any Event of Default and of any other development, financial or otherwise, which might materially and adversely affect the Collateral. Debtor shall mark its books and records to reflect the security interest of Secured Party under this Agreement.

4.1.4 Financing Statements and Other Actions; Defense of Title. Secured Party shall be permitted to file all financing statements required to perfect its interest in the Collateral. Debtor will execute and deliver to Secured Party such other documents and take such other actions as may from time to time be requested by Secured Party in order to maintain a first perfected security interest in and, in the case of Equipment, Leases, Deposit Accounts, Letter-of-Credit-Rights, and Electronic Chattel Paper, Control of, the Collateral. Debtor will take any and all actions necessary to defend title to the Collateral against all persons and to defend the security interest of the Secured Party in the Collateral and the priority thereof against any Lien not expressly permitted hereunder.

4.1.5 Disposition of Collateral. Debtor will not sell, lease or otherwise dispose of the Collateral except (i) prior to the occurrence of an Event of Default, dispositions specifically permitted pursuant to the Loan Agreement, (ii) until such time following the occurrence of an Event of Default, as Debtor receives a notice from Secured Party instructing Debtor to cease such transactions, sales or leases of Inventory in the ordinary course of business, and (iii) until such time as Debtor receives a notice from Secured Party pursuant to Article VII, proceeds of Inventory and Accounts collected in the ordinary course of business.

4.1.6 Modification of Collateral. Debtor shall do nothing to impair the rights of Secured Party in the Collateral. Debtor shall not modify the Collateral, except to the extent the Association of American Railroads, United States Department of Transportation, or any other United States or state governmental agency or any other applicable law requires that any Railcar be altered or modified. Debtor shall not grant any extension of time for any payment with respect to the Collateral, or release in whole or in part any person or entity liable for payment with respect to the Collateral, or allow any credit or discount for payment with respect to the Collateral other than normal trade discounts granted in the ordinary course of business.

4.1.7 Liens. Debtor will not create, incur, or suffer to exist any Lien on the Collateral except (i) the security interest created by this Agreement, and (ii) other Liens permitted pursuant to the Loan Agreement.

4.1.8 Change in Location, Jurisdiction of Organization or Name. Debtor will not (i) have any Inventory, Equipment or Fixtures or proceeds or products thereof (other than Inventory and proceeds thereof disposed of as permitted by Section 4.1.5) at a location other than a location specified in Exhibit "D", (ii) maintain records relating to the Receivables at a location other than at the location specified on Exhibit "D", (iii) maintain a place of business at a location other than a location specified on Exhibit "D", (iv) change its name or taxpayer identification number, (v) change its mailing address, or (vi) change its jurisdiction of organization, unless Debtor shall have given Secured Party not less than 30 days' prior written notice thereof, and the

Secured Party shall have determined that such change will not adversely affect the validity, perfection or priority of Secured Party's security interest in the Collateral.

4.1.9 Other Financing Statements or Security Agreements. Debtor will authorize any financing statement or enter into any other security agreement naming it as debtor covering all or any portion of the Collateral, except as permitted by Section 4.1.7.

#### 4.2 Receivables.

4.2.1 Certain Agreements on Receivables. Debtor will not make or agree to make any discount, credit, rebate or other reduction in the original amount owing on a Receivable or accept in satisfaction of a Receivable less than the original amount thereof, except that, prior to the occurrence of an Event of Default, Debtor may reduce the amount of Accounts arising from the sale of Inventory in accordance with its present policies and in the ordinary course of business.

4.2.2 Collection of Receivables. Except as otherwise provided in this Agreement, Debtor will collect and enforce, at Debtor's sole expense, all amounts due or hereafter due to Debtor under the Receivables.

4.2.3 Delivery of Invoices. Debtor will deliver to Secured Party immediately upon its request after the occurrence of an Event of Default duplicate invoices with respect to each Account bearing such language of assignment as Secured Party shall specify.

4.2.4 Disclosure of Counterclaims on Receivables. If (i) any discount, credit or agreement to make a rebate or to otherwise reduce the amount owing on a Receivable exists or (ii) if, to the knowledge of Debtor, any dispute, setoff, claim, counterclaim or defense exists or has been asserted or threatened with respect to a Receivable, Debtor will disclose such fact to Secured Party in writing in connection with the inspection by the Secured Party of any record of Debtor relating to such Receivable and in connection with any invoice or report furnished by Debtor to Secured Party relating to such Receivable.

#### 4.3 Inventory and Equipment.

4.3.1 Maintenance of Goods. Debtor will do all things necessary to maintain, preserve, protect and keep the Inventory and the Equipment in good repair and working and saleable condition.

4.3.2 Insurance. Debtor will (i) maintain fire and extended coverage insurance on the Inventory and Equipment containing a lender's loss payable clause in favor of Secured Party, and providing that said insurance will not be terminated except after at least 30 days' written notice from the insurance company to Secured Party, (ii) maintain such other insurance on the Collateral for the benefit of Secured Party as Secured Party shall from time to time request, (iii) furnish to Secured Party upon the request of Secured Party from time to time the originals of all policies of insurance on the Collateral and certificates with respect to such insurance and (iv) maintain general liability insurance naming Secured Party as an additional insured.

4.3.3 Safekeeping of Inventory; Inventory Covenants. Secured Party shall not be responsible for (i) the safekeeping of the Inventory; (ii) any loss or damage thereto or destruction thereof occurring or arising in any manner or fashion from any cause; (iii) any diminution in the value of Inventory or (iv) any act or default of any carrier, warehouseman, bailee or forwarding agency or any other Person in any way dealing with or handling the Inventory, except to the

extent that Debtor incurs any loss, cost, claim or damage from any of the foregoing as a result of the gross negligence or willful misconduct of Secured Party. All risk of loss, damage, distribution or diminution in value of the Inventory shall, except as noted in the previous sentence, be borne by Debtor.

4.3.4 Records and Schedules of Inventory. Debtor shall keep correct and accurate daily records on a first-in, first-out basis, itemizing and describing the kind, type, quality and quantity of Inventory, Debtor's cost therefor and selling price thereof, and the daily withdrawals therefrom and additions thereto and Inventory then on consignment, and shall, at the request of the Secured Party, furnish to the Secured Party, daily copies of the working papers related thereto and, at the times required under the Loan Agreement. A physical count of the Inventory shall be conducted no less often than annually and a report based on such count of Inventory shall promptly thereafter be provided to Secured Party together with such supporting information including, without limitation invoices relating to Debtor's purchase of goods listed in said report, as Secured Party shall, in its sole and absolute discretion, request.

4.3.5 Returned and Repossessed Inventory. In the event Debtor acquires Inventory, if at any time prior to the occurrence of an Event of Default, any Account Debtor returns any Inventory to Debtor with a value in excess of \$10,000.00, Debtor shall promptly determine the reason for such return and, if Debtor accepts such return, issue a credit memorandum (with a copy to be sent to the Secured Party if the Secured Party has so requested) in the appropriate amount to such Account Debtor. After the occurrence of an Event of Default, Debtor shall hold all returned Inventory in trust for Secured Party, shall segregate all returned Inventory from all other property of Debtor or in its possession and shall conspicuously label said returned Inventory as the property of Secured Party.

4.4 Instruments, Chattel Paper, and Documents. Debtor will (i) deliver to Secured Party immediately upon execution of this Agreement the originals of all Chattel Paper and Instruments (if any then exist), (ii) hold in trust for Secured Party upon receipt and immediately thereafter deliver to Secured Party any Chattel Paper and Instruments constituting Collateral, and (iii) upon Secured Party's request, deliver to Secured Party (and thereafter hold in trust for Secured Party upon receipt and immediately deliver to Secured Party) any Document evidencing or constituting Collateral.

#### 4.5 Accounts.

4.5.1 Verification of Accounts. Secured Party shall have the right, at any time or times hereafter, in its name or in the name of a nominee of Secured Party, to verify the validity, amount or any other matter relating to any Accounts, by mail, telephone, telegraph or otherwise.

4.5.2 Disputed Accounts; Limitation on Modification of Accounts. Debtor shall give Secured Party prompt written notice of any Accounts in excess of \$10,000.00. Each report shall identify all disputed Accounts and disclose with respect thereto, in reasonable detail, the reason for the dispute, all claims related thereto and the amount in controversy. Debtor will not, without Secured Party's prior written consent, grant any extension of the time for payment of any of the Accounts, compromise, compound or settle the same for less than the full amount thereof, release, wholly or partly, any Person liable for the payment thereof, or allow any credit or discount whatsoever thereon other than trade discounts granted in the ordinary course of business of Debtor.

4.5.3 Appointment of the Agent as Attorney-in-Fact. Debtor hereby irrevocably designates, makes, constitutes and appoints Secured Party (and all persons designated by Secured Party), exercisable after the occurrence of an Event of Default, as its true and lawful attorney-in-fact, and authorizes Secured Party, in Debtor's or Secured Party's name, to: (i) demand payment of Accounts; (ii) enforce payment of Accounts by legal proceedings or otherwise; (iii) exercise all of Debtor's rights and remedies with respect to proceedings brought to collect an Account; (iv) sell or assign any Account upon such terms, for such amount and at such time or times as Secured Party deems advisable; (v) settle, adjust, compromise, extend or renew an Account; (vi) discharge and release any Account; (vii) take control in any manner of any item of payment or proceeds thereof; (viii) prepare, file and sign Debtor's name on any proof of claim in bankruptcy or other similar document against an Account Debtor; (ix) endorse Debtor's name upon any items of payment or proceeds thereof and deposit the same in Secured Party's account on account of the Obligations; (x) endorse Debtor's name upon any chattel paper, document, instrument, invoice, or similar document or agreement relating to any Account or any goods pertaining thereto; (xi) sign Debtor's name on any verification of Accounts and notices thereof to Account Debtor; (xii) notify the post office authorities to change the address for delivery of Debtor's mail to an address designated by Secured Party, have access to any lock box or postal box into which any of Debtor's mail is deposited, and open and dispose of all mail addressed Debtor, and (xiii) do all acts and things which are necessary, in Secured Party's sole discretion, to fulfill Debtor's obligations under this Agreement.

4.5.4 Notice to Account Borrower. Secured Party may, in its sole discretion, at any time or times after an Event of Default has occurred and is continuing, and without prior notice to Debtor, notify any or all Account Debtors that the Accounts have been assigned to Secured Party and that Secured Party has a security interest therein. Secured Party may direct any or all Account Debtors to make all payments upon the Accounts directly to Secured Party. Secured Party shall furnish Debtor with a copy of such notice.

4.6 Deposit Accounts. Debtor will (i) upon Secured Party's request, notify each bank or other financial institution in which it maintains a Deposit Account or other deposit (general or special, time or demand, provisional or final) of the security interest granted to Secured Party hereunder and cause each such bank or other financial institution to acknowledge such notification in writing and (ii) upon Secured Party's request, deliver to each such bank or other financial institution a letter, in form and substance acceptable to Secured Party, transferring dominion and control over each such account to Secured Party.

4.7 Federal, State or Municipal Claims. Debtor will notify Secured Party of any Collateral which constitutes a claim against a governmental authority, or any instrumentality or agency thereof, the assignment of which claim is restricted by federal, state or municipal law.

4.8 Warehouse Receipts Non-Negotiable. Debtor agrees that if any warehouse receipt or receipt in the nature of a warehouse receipt is issued with respect to any of its inventory, such warehouse receipt or receipt in the nature thereof shall not be "negotiable" (as such term is used in Section 7-104 of the UCC).

4.9 Mortgagee's and Landlord Waivers. Debtor shall cause each mortgagee of real property owned by Debtor (upon request by Secured Party) and each landlord of real property leased by Debtor to execute and deliver instruments satisfactory in form and substance to Secured Party by which such mortgagee or landlord waives their rights, if any, in the Collateral.

4.10 Compliance with Agreements. Debtor shall comply in all material respects with all mortgages, deeds of trust, instruments, and other agreements binding on it or affecting its properties or business, including, without limitation the Management Agreement. Debtor shall not change, modify or amend or agree to change, modify or amend the Management Agreement in any material respect.

4.11 Compliance with Laws. Debtor shall comply with all applicable laws (including, without limitation, 49 USC § 101 *et seq.*) rules, regulations, and orders of any court or governmental authority, including, without limitation, the Surface Transportation Board of the Department of Transportation, or the Association of American Railroads.

4.12 Commercial Tort Claims. If Debtor at any time holds or acquires a Commercial Tort Claim, Debtor shall immediately notify Secured Party in writing of the details thereof and grant to Secured Party in writing a security interest therein or lien thereon and in the Proceeds thereof, in form and substance satisfactory to Secured Party.

4.13 Letters-of-Credit Rights. If Debtor is at any time a beneficiary under a letter of credit now or hereafter issued in favor of Debtor, Debtor shall promptly notify Secured Party thereof in writing and, at Secured Party's request, Debtor shall, pursuant to an agreement in form and substance satisfactory to Secured Party, either (a) arrange for the issuer or any confirmer of such letter of credit to consent to an assignment to Secured Party of the proceeds of any drawing under the letter of credit or (b) arrange for Secured Party to become the transferee beneficiary of the letter of credit, with Secured Party agreeing, in each case, that the proceeds of any drawing under the letter of credit are to be applied as provided in the Loan Agreement.

4.14 Further Assurances. At any time and from time to time, upon the request of Secured Party, and at the sole expense of Debtor, Debtor shall promptly execute and deliver all such further instruments and documents and take such further action as Secured Party may deem necessary or desirable to preserve and perfect its security interest in the Collateral and carry out the provisions and purposes of this Agreement, including, without limitation, (a) the execution and filing of such financing statements as Secured Party may require and (b) the deposit of all certificates of title issuable with respect to any of the Collateral and noting thereon the security interest hereunder. A carbon, photographic, or other reproduction of this Agreement or of any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement and may be filed as a financing statement. Debtor shall promptly endorse and deliver to Secured Party all documents, instruments, and chattel paper that it now owns or may hereafter acquire.

4.15 Leases. Debtor shall maintain the Leases in full force and effect. Debtor shall perform its obligations under the Leases and shall use its best and diligent efforts to enforce performance of the lessees under the Leases.

## ARTICLE V

### DEFAULT

5.1 Acceleration and Remedies. Upon the occurrence of an Event of Default under the Loan Agreement or any other Loan Document, Secured Party may exercise any or all of the following rights and remedies:

5.1.1 Those rights and remedies provided in this Agreement, the Loan Agreement, or any other Loan Document, provided that this **Section 5.1.1** shall not be understood to limit any rights or remedies available to Secured Party prior to an Event of Default.

5.1.2 Those rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' lien) when a debtor is in default under a security agreement.

5.1.3 Those rights and remedies available to Secured Party under 49 USC § 10101 *et seq.*, and all other rights and remedies available to Secured Party through the Surface Transportation Board of the Department of Transportation, the Association of American Railroads and any other governmental authority having jurisdiction over the Collateral.

5.1.4 Without notice except as specifically provided in **Section 8.1** or elsewhere herein, sell, lease, assign, grant an option or options to purchase or otherwise dispose of the Collateral or any part thereof in one or more parcels at public or private sale, for cash, on credit or for future delivery, and upon such other terms as Secured Party may deem commercially reasonable.

5.2 **Debtor's Obligations Upon Event of Default.** Upon the request of Secured Party after the occurrence of an Event of Default, Debtor will:

5.2.1 **Assembly of Collateral.** Assemble and make available to Secured Party the Collateral and all records relating thereto at any place or places specified by Secured Party.

5.2.2 **Secured Party Access.** Permit Secured Party, by Secured Party's representatives and agents, to enter any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral and to remove all or any part of the Collateral.

5.3 **License.** Secured Party is hereby granted a license or other right to use, following the occurrence and during the continuance of an Event of Default, without charge, Debtor's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, customer lists and advertising matter, or any property of a similar nature, as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral, and, following the occurrence and during the continuance of an Event of Default, Debtor's rights under all licenses and all franchise agreements shall inure to Secured Party's benefit. In addition, Debtor hereby irrevocably agrees that Secured Party may, following the occurrence and during the continuance of an Event of Default, sell any of Debtor's Inventory directly to any Person, including without limitation Persons who have previously purchased Debtor's Inventory from Debtor and in connection with any such sale or other enforcement of Secured Party's rights under this Agreement, may sell Inventory which bears any trademark owned by or licensed to Debtor and any Inventory that is covered by any copyright owned by or licensed to Debtor and Secured Party may finish any work in process and affix any trademark owned by or licensed to Debtor and sell such Inventory as provided herein.

## ARTICLE VI

### WAIVERS, AMENDMENTS AND REMEDIES

No delay or omission of Secured Party to exercise any right or remedy granted under this Agreement shall impair such right or remedy or be construed to be a waiver of any Event of Default, or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Agreement whatsoever shall be valid unless in writing signed by Secured Party and then only to the extent in such writing specifically set forth. All rights and remedies contained in this Agreement or by law afforded shall be cumulative and all shall be available to Secured Party until the Secured Obligations have been paid in full.

## ARTICLE VII

### PROCEEDS; COLLECTION OF RECEIVABLES

7.1 Lockboxes. Debtor shall execute and deliver to Secured Party irrevocable lockbox agreements in the form provided by or otherwise acceptable to Secured Party, which agreements shall be accompanied by an acknowledgment by the bank where the lockbox is located of the Lien of Secured Party granted hereunder and of irrevocable instructions to wire all amounts collected therein to a special collateral account at Secured Party.

7.2 Collection of Receivables. Upon the occurrence and continuation of a an Event of Default, Secured Party may at any time in its sole discretion, by giving Debtor written notice, elect to require that the Receivables be paid directly to Secured Party. In such event, Debtor shall, and shall permit Secured Party to, promptly notify the Account Debtors or obligors under the Receivables of the Banks' interest therein and direct such Account Debtors or obligors to make payment of all amounts then or thereafter due under the Receivables directly to Secured Party. Upon receipt of any such notice from Secured Party, Debtor shall thereafter hold in trust for Secured Party, all amounts and proceeds received by it with respect to the Receivables and Other Collateral and immediately and at all times thereafter deliver to Secured Party all such amounts and proceeds in the same form as so received, whether by cash, check, draft or otherwise, with any necessary endorsements. Secured Party shall hold and apply funds so received as provided by the terms of the Loan Agreement.

## ARTICLE VIII

### GENERAL PROVISIONS

8.1 Notice of Disposition of Collateral. Debtor hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to Debtor, addressed as set forth in Article IX, at least 10 days prior to (i) the date of any such public sale or (ii) the time after which any such private sale or other disposition may be made.

8.2 Compromises and Collection of Collateral. Debtor and Secured Party recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing,



Debtor agrees that Secured Party may at any time and from time to time, if an Event of Default has occurred and is continuing, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as Secured Party in its sole discretion shall determine or abandon any Receivable, and any such action by Secured Party shall be commercially reasonable so long as Secured Party acts in good faith based on information known to it at the time it takes any such action.

8.3 Secured Party Performance of Debtor's Obligations. Without having any obligation to do so, Secured Party may perform or pay any obligation which Debtor has agreed to perform or pay in this Agreement and Debtor shall, reimburse Secured Party for any amounts paid by Secured Party pursuant to this Section 8.3. Debtor's obligation to reimburse Secured Party pursuant to the preceding sentence shall be a Secured Obligation payable on demand.

8.4 Authorization for Secured Party to Take Certain Action. Debtor irrevocably authorizes Secured Party at any time and from time to time in the sole discretion of Secured Party and appoints Secured Party as its attorney in fact (i) to execute on behalf of Debtor as debtor and to file financing statements necessary or desirable in the Secured Party's sole discretion to perfect and to maintain the perfection and priority of Secured Party's security interest in the Collateral, (ii) to indorse and collect any cash proceeds of the Collateral, (iii) to file a carbon, photographic or other reproduction of this Agreement or any financing statement with respect to the Collateral as a financing statement in such offices as the Secured Party in its sole discretion deems necessary or desirable to perfect and to maintain the perfection and priority of Secured Party's security interest in the Collateral, (iv) subject to the terms of Section 4.1.4, to enforce payment of the Receivables in the name of Secured Party or Debtor, (v) to apply the proceeds of any Collateral received by Secured Party to the Secured Obligations as provided in the Loan Agreement and (vii) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for such Liens as are specifically permitted hereunder), and Debtor agrees to reimburse Secured Party on demand for any payment made or any expense incurred by Secured Party in connection therewith, provided that this authorization shall not relieve Debtor of any of its obligations under this Agreement or under the Loan Agreement.

8.5 Specific Performance of Certain Covenants. Debtor acknowledges and agrees that a breach of any of the covenants contained in Sections 4.1.4, 4.1.6, 4.4, 5.3, or 8.7 or in Article VII will cause irreparable injury to Secured Party, that Secured Party has no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of Secured Party to seek and obtain specific performance of other obligations of Debtor contained in this Agreement, that the covenants of Debtor contained in the Sections referred to in this Section 8.5 shall be specifically enforceable against Debtor.

8.6 Use and Possession of Certain Premises. Upon the occurrence of an Event of Default, Secured Party shall be entitled to occupy and use any premises owned or leased by Debtor where any of the Collateral or any records relating to the Collateral are located until the Secured Obligations are paid or the Collateral is removed therefrom, whichever first occurs, without any obligation to pay Debtor for such use and occupancy.

8.7 Dispositions Not Authorized. Debtor is not authorized to sell or otherwise dispose of the Collateral except as set forth in Section 4.1.5 and notwithstanding any course of dealing between Debtor and the Secured Party or other conduct of the Secured Party, no authorization to sell or otherwise dispose of the Collateral (except as set forth in Section 4.1.5) shall be binding upon Secured Party unless such authorization is in writing signed by Secured Party.

8.8 Benefit of Agreement. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of Debtor, Secured Party and their respective successors and assigns, except that Debtor shall not have the right to assign its rights or delegate its obligations under this Agreement or any interest herein, without the prior written consent of Secured Party.

8.9 Survival of Representations. All representations and warranties of Debtor contained in this Agreement shall survive the execution and delivery of this Agreement.

8.10 Taxes and Expenses. Any taxes (including income taxes) payable or ruled payable by Federal or State authority in respect of this Agreement shall be paid by Debtor, together with interest and penalties, if any. Debtor shall reimburse Secured Party for any and all out-of-pocket expenses and internal charges (including reasonable attorneys', auditors' and accountants' fees and reasonable time charges of attorneys, paralegals, auditors and accountants who may be employees of Secured Party) paid or incurred by Secured Party in connection with the preparation, execution, delivery, administration, collection and enforcement of this Agreement and in the audit, analysis, administration, collection, preservation or sale of the Collateral (including the expenses and charges associated with any periodic or special audit of the Collateral). Any and all costs and expenses incurred by Debtor in the performance of actions required pursuant to the terms hereof shall be borne solely by Debtor.

8.11 Headings. The title of and section headings in this Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Agreement.

8.12 Termination. This Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no Secured Obligations outstanding) until (i) the Loan Agreement has terminated pursuant to its express terms and (ii) all of the Secured Obligations have been indefeasibly paid and performed in full and no commitments of Secured Party which would give rise to any Secured Obligations are outstanding.

8.13 Entire Agreement. This Agreement embodies the entire agreement and understanding between Debtor and Secured Party relating to the Collateral and supersedes all prior agreements and understandings between Debtor and Secured Party relating to the Collateral.

8.14 CHOICE OF LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS (AND NOT THE LAW OF CONFLICTS) OF THE STATE OF TEXAS, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.

8.15 INDEMNITY. DEBTOR HEREBY AGREES TO INDEMNIFY SECURED PARTY AND ITS RESPECTIVE SUCCESSORS, ASSIGNS, AGENTS, ATTORNEYS, AND EMPLOYEES, FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, PENALTIES, SUITS, COSTS, AND EXPENSES OF ANY KIND AND NATURE (INCLUDING, WITHOUT LIMITATION, ALL EXPENSES OF LITIGATION OR PREPARATION THEREFOR WHETHER OR NOT SECURED PARTY IS A PARTY THERETO) IMPOSED ON, INCURRED BY OR ASSERTED AGAINST SECURED PARTY OR THEIR RESPECTIVE SUCCESSORS, ASSIGNS, AGENTS, ATTORNEYS, AND EMPLOYEES, IN ANY WAY RELATING TO OR ARISING OUT OF THIS AGREEMENT, OR THE MANUFACTURE, PURCHASE, ACCEPTANCE, REJECTION, OWNERSHIP, DELIVERY, LEASE, POSSESSION, USE, OPERATION, CONDITION, SALE, RETURN OR OTHER DISPOSITION OF ANY COLLATERAL (INCLUDING, WITHOUT LIMITATION, LATENT AND

OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE BY THE SECURED PARTY OR DEBTOR, AND ANY CLAIM FOR PATENT, TRADEMARK OR COPYRIGHT INFRINGEMENT).

## ARTICLE IX

### NOTICES

9.1 Sending Notices. Any notice required or permitted to be given under this Agreement shall be sent (and deemed received) in the manner and to the addresses set forth in the Loan Agreement.

9.2 Change in Address for Notices. Each Debtor and Secured Party may change the address for service of notice upon it by a notice in writing to the other parties.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK -  
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, Debtor and Secured Party have executed this Agreement as of the date first above written.

DEBTOR:

BAYPORT RAIL TERMINAL LLC, a Texas limited liability company

By: Michael R. Curry  
Michael R. Curry, its Manager

SECURED PARTY:

AMEGY BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Carmen Jordan, Senior Vice President

IN WITNESS WHEREOF, Debtor and Secured Party have executed this Agreement as of the date first above written.

DEBTOR:

BAYPORT RAIL TERMINAL LLC, a Texas limited liability company

By: \_\_\_\_\_

Michael R. Curry, its Manager

SECURED PARTY:

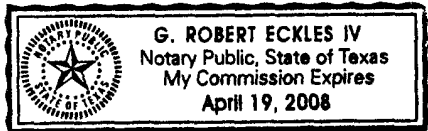
AMEGY BANK NATIONAL ASSOCIATION

By: \_\_\_\_\_

  
Carmen Jordan, Senior Vice President

STATE OF TEXAS           §  
                                     §  
COUNTY OF HARRIS       §

On this 30 day of June 2005, before me personally appeared Michael R. Curry, who being by me duly sworn, says that he is the Manager of Bayport Rail Terminal LLC, a Texas limited liability company and that the foregoing instrument was executed on behalf of the limited liability company in the capacity and for the purposes and consideration therein stated and that the execution of the foregoing instrument was the free act and deed of said limited liability company.



G. Robert Eckles IV  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

STATE OF TEXAS           §  
                                     §  
COUNTY OF HARRIS       §

On this \_\_\_\_\_ day of June 2005, before me personally appeared Carmen Jordan, who being by me duly sworn, says she is the Senior Vice President of Amegy Bank National Association, a national association, and that the foregoing instrument was executed on behalf of said association, in the capacities and for the purposes and consideration therein stated and that the execution of the foregoing instrument was the free act and deed of said association.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

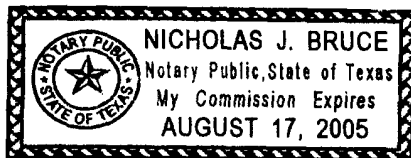
STATE OF TEXAS           §  
                                  §  
COUNTY OF HARRIS       §

On this \_\_\_\_ day of June 2005, before me personally appeared Michael R. Curry, who being by me duly sworn, says that he is the Manager of Bayport Rail Terminal LLC, a Texas limited liability company and that the foregoing instrument was executed on behalf of the limited liability company in the capacity and for the purposes and consideration therein stated and that the execution of the foregoing instrument was the free act and deed of said limited liability company.

\_\_\_\_\_  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

STATE OF TEXAS           §  
                                  §  
COUNTY OF HARRIS       §

On this 30 day of June 2005, before me personally appeared Carmen Jordan, who being by me duly sworn, says she is the Senior Vice President of Amegy Bank National Association, a national association, and that the foregoing instrument was executed on behalf of said association, in the capacities and for the purposes and consideration therein stated and that the execution of the foregoing instrument was the free act and deed of said association.



Nicholas J. Bruce  
NOTARY PUBLIC IN AND FOR  
THE STATE OF TEXAS

**EXHIBIT "A"**

**Deposit Accounts**

Account # 69285 held at Amegy Bank

Account #51573675 held at Amegy Bank



**EXHIBIT "B"**

**List of Certain Equipment (Locomotive), Leases, and Instruments**

A. CERTAIN EQUIPMENT ( INCLUDING THE LOCOMOTIVE):

LOCOMOTIVE: One GP7 1500HP Locomotive manufactured in 1952 by General Motors and presently known as AKDN-703.

B. LEASES: None as of the date hereof

**EXHIBIT "C"**

**UCC Filing Jurisdictions**

<b><u>Debtor</u></b>	<b><u>Jurisdiction</u></b>
Bayport Rail Terminal LLC	Texas Secretary of State

**Surface Transportation Board**

<b><u>Debtor</u></b>	<b><u>Equipment</u></b>	<b><u>Jurisdiction</u></b>
Bayport Rail Terminal LLC	Locomotive	Secretary, Surface Transportation Board, Washington, DC 20423

**EXHIBIT "D"**

**Locations**

Principal Place of Business and Mailing Address:

9500 New Century Drive  
Pasadena, TX 77507-1836  
Attention: Robert Eckles

Location(s) of Receivables Records (if different from Principal Place of Business above):

Same as above

Locations of Inventory and Equipment and Fixtures:

A. Properties Owned by Debtor (indicate which):

Inventory, Equipment and Fixtures – 5100 Underwood Road, Pasadena, Texas

(This is the Mortgaged Property)

B. Properties Leased by Debtor (indicate which) (include Landlord's Name):

None

C. Public Warehouses or other Locations pursuant to Bailment or Consignment Arrangements for Debtor (indicate which) (include name of Warehouse Operator or other Bailee or Consignee):

None

**EXHIBIT “E”**

**Federal Employer Identification Number**

<b><u>Debtor</u></b>	<b><u>Federal Employer Identification Number</u></b>
Bayport Rail Terminal LLC	75-3084316